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April 22, 2022

David Reyes
City of Pasadena
Director of Planning and Community Development
100 North Garfield Avenue
Pasadena, CA 91101

Dear David Reyes:

RE: City of Pasadena – Housing Crisis Act, Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of Pasadena (City) regarding the application of the Housing Crisis Act of 2019 (Gov. Code, § 66300) as it pertains to the City's proposed General Plan Amendments associated with the Lincoln Avenue Specific Plan (LASP), the City's continued implementation of its Development Cap Program, and provisions of the SB 9 Urgency Ordinance (No. 7384) that pertain to accessory dwelling units (ADUs). The following summarizes the contents of this letter:

- Part 1: **Proposed Reduction in Intensity of General Plan Land Use Designation** – HCD disagrees with the City's legal rationale for the proposed density reduction in Medium Mixed-Use General Plan Land Use Designation from 0-87 dwelling units per acre (du/ac) to 0-32 du/ac and finds that the proposed action would violate the Housing Crisis Act (HCA) without a concurrent and compensatory density increase elsewhere.

- Part 2: **Development Cap Program** – HCD finds that the City's continued implementation of its Development Cap Program violates the HCA and requests that the City remedy the situation.

- Part 3: **State ADU Law** – HCD finds that two provisions of the City's recently adopted SB 9 Urgency Ordinance likely violate State ADU Law and requests that the City remedy the situation.

Background

In the fall of 2021, the California Department of Housing and Community Development (HCD) received a complaint in which concerns were raised that certain proposed City

actions may violate state law. In response, HCD sent the City a Letter of Inquiry (LOI) dated January 12, 2022, identifying three topics of concern and requesting that the City provide a legal rationale for its actions. The City responded to HCD in a letter dated February 22, 2022 and provided the requested legal rationale pertaining to Topic 1 (Change in Land Use Designation from Medium Mixed-Use to Low Mixed-Use) and Topic 2 (Modifications to Development Standards). No legal rationale was provided pertaining to Topic 3 (Development Cap Program). HCD accepts the legal rationale provided to support the City's action with regard to Topic 2 (Modifications to Development Standards) and has no further questions on that matter. This letter addresses HCD's remaining concerns regarding the City's actions pertaining to Topics 1 and 3.

At the time of writing the LOI (and based on the content of the City's draft resolution), HCD understood that the proposed General Plan Amendment was to change the General Plan Land Use Designation from Medium Mixed-Use (0-87 du/ac) to Low Mixed-Use (0-32 du/ac). However, at the November 15, 2021, City Council meeting, the action was changed such that General Plan Land Use Designation would remain Medium Mixed-Use but the density of the Medium Mixed-Use Land Use Designation would be reduced from 0-87 du/ac to 0-32 du/ac. For the purposes of HCA compliance, HCD considers these two actions to be identical.

At the March 15, 2022, City Council meeting, the City rescinded the reduction in residential density that was adopted at the November 15, 2021, City Council meeting and returned the allowable density range under Medium Mixed-Use General Plan Land Use Designation in the subject area to 0-87 du/ac as originally established at the time of the 2015 General Plan Update. At the time of writing, this density is the current applicable general plan density in the subject area. However, the staff report dated March 15, 2022, explains that the City intends to return the maximum allowable residential density to 0-32 du/ac if HCD confirms the legality of such a change under the HCA.

Part 1: Proposed Reduction in Intensity of General Plan Land Use Designation

Housing Crisis Act of 2019 – Reducing the Intensity of General Plan Land Use Designation (Gov. Code, § 66300)

The HCA limits the ability of a local agency to reduce the intensity of the land use designation of a parcel or parcels without concurrently increasing residential densities elsewhere. (Gov. Code, § 66300, subds. (b)(1)(A) and (i)(1).) This provision is intended to ensure that no overall net loss of development capacity will occur during the housing crisis. Specifically, the law prohibits:

> Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or

> reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district in effect at the time of the proposed change, below what was allowed under the land use designation or zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B) or subdivision (i). For purposes of this subparagraph, "reducing the intensity of land use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the site's residential development capacity.

(Gov. Code, § 66300, subd. (b)(1)(A).)

> This section does not prohibit an affected county or an affected city, including the local electorate acting through the initiative process, from changing a land use designation or zoning ordinance to a less intensive use, or reducing the intensity of land use, if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.

(Gov. Code, § 66300, subd. (i)(1).)

Reducing Intensity in the General Plan's Medium Mixed-Use Land Use Designation

During the recent update to the LASP, the City upzoned an area located between the 1-210 Freeway and Pepper Street on the westside of Lincoln Avenue from LASP-CL (Limited Commercial) to LA-MU-N (Mixed-Use). This change has resulted in an increase in residential density from 16 du/ac to 32 du/ac. However, the allowable density range in the underlying General Plan Land Use Designation of Medium Mixed-Use was reduced from 0-87 du/ac to 0-32 du/ac. The change in the General Plan Land Use Designation was reversed on March 15, 2022 and is currently back to 0-87 du/ac. HCD disagrees with the City's assertion that increasing density in a specific plan/zoning code alone frees the City of any obligation to address the reduction in the allowable density of the General Plan Land Use Designation.

Explicit Statutory Reference to General Plan: The HCA explicitly references actions that would reduce the intensity of land use within an existing General Plan Land Use Designation. This signals that the Legislature intended for such amendments to the General Plan to be subject to the no-net-loss requirements of the HCA, regardless of any density increases in associated implementation tools (i.e., a specific plan or zoning code). An interpretation that categorically ignores changes to residential development capacities in the General Plan,

simply because General Plan densities are not typically implemented directly, would effectively render the General Plan irrelevant for the no-net-loss purposes of the HCA.

Complicates Future Upzonings: By reducing the maximum density allowed under the General Plan to match exactly the maximum density allowed under the specific plan/zoning code, the City is creating a situation in which all future upzonings in this area will require a General Plan amendment. By necessitating future General Plan amendments, the City is needlessly increasing the cost and complexity of future upzonings and may be hamstringing future City housing production efforts. This action seems particularly meritless given that the Medium Mixed-Use land use designation, with its 0-2.25 FAR and 0-87 du/ac, can already accommodate the proposed upzoning of the area from LASP-CL (maximum 16 du/ac) to LA-MU-N (maximum 32 du/ac) – without the City taking any action to amend the General Plan.

Streamlined Ministerial Approval Process: A project approval under the Streamlined Ministerial Approval Process (i.e., SB 35) is illustrative. Government Code section 65913.4 requires the availability of a Streamlined Ministerial Approval Process for developments in localities that have not yet made sufficient progress in meeting their Regional Housing Needs Allocation (RHNA). The City of Pasadena is one of the local agencies that has made insufficient progress toward its lower income RHNA (Very Low Income and Low income) and is therefore subject to the Streamlined Ministerial Approval Process for proposed developments with at least 50 percent affordability. (See HCD's SB 35 Statewide Determination Summary.) Under the Streamlined Ministerial Approval Process, a development eligible for streamlining may have a density up to the maximum residential density expressed in the applicable General Plan Land Use Designation. (Gov. Code, § 65913.4, subd. (a)(5)(A).) In the context of the City's action, this would result in a reduction in residential density of a project submitted under the Streamlined Ministerial Approval Process from 87 du/ac to 32 du/ac in the subject area, resulting in less housing being produced.

No-Net-Loss Under the Housing Crisis Act

Because the reduction in intensity in the Medium Mixed-Use General Plan Land Use Designation in the subject area is subject to the requirements of Government Code section 66300, subdivision (b)(1)(a), a concurrent and compensatory increase in density pursuant to Government Code section 66300, subdivision (i)(1), must occur elsewhere to ensure that no net loss of residential capacity occurs. Given that the subject area with the LASP is approximately 9.5 acres in size, the reduction in residential development capacity would be approximately 523 units. The existing 87 du/ac density level would yield 827 units and the proposed reduction to 32 du/ac would yield 304 units. Therefore, the City would need to concurrently increase residential densities elsewhere in the City to accommodate an additional 523 units (approximately) to avoid a no-net-loss violation under the HCA if it chooses to proceed with the proposed reduction in intensity. Note that the development capacity increase

resulting from the City's recent upzoning of the subject area from LASP-CL (Limited Commercial) to LA-MU-N (Mixed-Use) cannot be used for balancing purposes because the concurrent upzoning must occur on "other parcels." (Gov. Code, § 66300, subd. (i)(1).)

Recommended Approaches: In general, offsetting a decrease in intensity of land use could be accomplished by identifying parcels located elsewhere in the city and taking, for example, either of the approaches described below.

- Amend a specific plan map, zoning map, or general plan land use map such that the target upzone area receives a different zoning/land use designation with a higher maximum residential density (e.g., changing the zoning from R2 to R3).
- Increase the maximum allowable residential density in an existing specific plan zoning district, zoning district, or general plan land use designation that regulates the target upzone area (e.g., increase the maximum allowable residential density in the R2 zone from 30 du/ac to 45 du/ac).

The HCA provides simply that when conducting a concurrent and compensatory upzoning, the local agency must "ensure that there is no net loss in residential capacity." HCD recognizes the high degree of variability between the ways that different local agencies, in different contexts, may attempt such an effort. In other words, there is flexibility in how a local agency can establish compliance with the HCA, but it must demonstrate how a particular balancing action offsets a loss in residential development capacity elsewhere. There is no simple test upon which local agencies can reliably depend to establish compliance under the HCA.

HCD recommends that a local agency begins with a like-for-like replacement strategy. This is to say that residential development capacity lost in the General Plan should be replaced by increasing residential densities in the General Plan. Likewise, residential development capacity lost due to zoning actions should be replaced via a commensurate zoning action. This approach should result in development capacity balancing that is easier to rationalize and reflects the distinction between the densities expressed in a specific plan/zoning code (which are typically implemented directly) and densities expressed in the General Plan (which are implemented directly only in certain circumstances). Additionally, in cases where an existing zoning district or land use designation are being amended to allow higher densities, the local agency should verify that the existing development standards (e.g., FAR, maximum building heights, etc.) would not preclude developments from achieving the new higher density. Finally, the local agency should analyze the realistic development capacity of the upzoned area relative to the downzoned area and its obligation to affirmatively further fair housing. Factors such as site vacancy, proximity to resources/amenities, utilities, socioeconomic conditions, and development type (i.e., single, or multi-family residential) should be considered.

Part 2: Development Cap Program

Housing Crisis Act of 2019 – Development Caps (Gov. Code, § 66300)

The HCA contains provisions that limit the ability of a local agency to impose a cap on the number of residential units that can be built in a certain area or within a certain time frame. Specifically, the law prevents a local agency from establishing or implementing a policy that does any of the following:

(i) Limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected county or affected city, as applicable.
(ii) Acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period.
(iii) Limits the population of the affected county or affected city, as applicable.

(Gov. Code, § 66300, subd. (b)(1)(D).)

The City's Development Cap program, which imposes an absolute limit on the number of housing units that can be approved in each of the eight specific plan areas, violates the HCA. Specifically, it violates clause (i) above because it limits the number of land use approvals necessary for the construction of housing within a portion of an affected city. Accordingly, HCD requests that the City immediately cease implementation of the Development Cap program and adopt a resolution voiding the program at the earliest possible City Council meeting. In an email dated April 1, 2022, the City informed HCD of its intent to invalidate the Development Cap Program, and HCD is aware that this item is on the agenda for the Planning Commission meeting on April 27, 2022. As described, this action would likely comply with HCD's request. However, HCD retains this topic in this letter to formally memorialize HCD's position on the City's program.

Part 3: Accessory Dwelling Unit Treatment in SB 9 Urgency Ordinance

On February 8, 2022, HCD received a complaint regarding the contents of the City's recently adopted SB 9 Urgency Ordinance. Specifically, the concern was raised that the Ordinance may violate the HCA and State ADU Law. HCD finds that the following two provisions of the City's recently adopted SB 9 Urgency Ordinance violate State ADU Law (Gov. Code, §§ 65852.2, 65852.22).

Ordinance Inaccurately Counts ADUs When No Lot Split is Proposed: The Ordinance establishes a maximum density of "Two dwellings per lot" and defines "Existing Dwelling" to include existing ADUs (PMC § 17.22.020 – RS and RM-12 District Additional Development Standards, subsection (G – Duplex Units in Single-Family Residential Zones)). As it appears in the Ordinance, this two-units-per-lot limit seems to apply to situations in which a lot split is proposed as well as to situations in which a lot

split is not proposed. This would inaccurately implement SB 9 and deny property owners the right to develop ADUs consistent with State ADU Law. The provision of SB 9 that allows a local agency to impose a limit of two residential units specifies that ADUs/junior ADUs (JADUs) are to be counted towards that limit only in instances when a lot split is proposed. (Gov. Code, § 66411.7, subd. (j)(1).) In instances when a lot split is not proposed, these limitations do not apply and the local agency must allow ADUs and JADUs as it typically would pursuant to State ADU Law. In most instances, SB 9, together with State ADU Law, facilitates the creation of up to four units on a lot that is not split under SB 9 in different combinations of primary units, ADUs, and JADUs.

Ordinance Prohibits Lots Splits in a Parcel with an Existing ADU: The Ordinance disqualifies applications for a lot split under SB 9 if the parcel contains "one or more Accessory Dwelling Units" (PMC §16.08.240 – Urban Lot Split). In doing so, the Ordinance violates State ADU Law (Gov. Code, §§ 65852.2 and 65852.22). There is no provision in the lot split-related portion of SB 9 (Gov. Code, § 66411.7) that would justify this exclusion. In fact, Government Code section 66411.7, subdivision (j), specifically describes the relationship between lot splits under SB 9 and State ADU Law. Subdivision (j) provides that the City may impose a two-units-per-lot limit on each lot resulting from an SB 9 lot split. It further clarifies that following an SB 9 lot split, primary units, ADUs, and JADUs all count toward the two-unit limit – but it does not provide any language to suggest that a parcel with a primary unit (e.g., a single-family residence) and an ADU should be made ineligible for an SB 9 lot split. For example, an applicant may pursue an SB 9 lot split on a parcel containing an existing primary unit and ADU in order to create an additional buildable lot. When the lot split is completed, the newly created vacant lot could be developed to create two units. The two units could take the form of two primary units, a primary unit and an ADU, or a primary unit and a JADU.

HCD requests that the City amend the Ordinance to correct these two issues, or cease implementation of these provisions, to comply with State ADU Law.

Conclusion

HCD looks forward to assisting the City in its compliance with state housing laws. HCD would like to remind the City that HCD has enforcement authority over the Housing Crisis Act of 2019 and State ADU Law, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a city's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law. (Gov. Code, § 65585, subd. (j).)

In summary, HCD makes the following requests of the City:

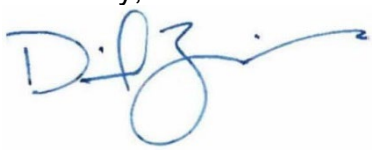
- **Change in Land Use Designation:** Choose either of the following options to avoid violating the HCA with regard to the proposed reduction in intensity in the General Plan's Medium Mixed-Use Land Use Designation in the area located between the 1-210 Freeway and Pepper Street on the westside of Lincoln Avenue.

    - **Option 1:** Take no further action regarding reductions in the intensity of residential land uses in the Medium Mixed-Use Land Use Designation in the subject area such that it will maintain a density range of 0-87 du/ac.
    - **Option 2:** Conduct a concurrent and compensatory upzoning at the time of the reduction in the intensity of residential land uses in the Medium Mixed-Use Land Use Designation consistent with the no-net-loss provisions of the HCA.

- **Development Cap Program:** Cease implementation of the Development Cap program and adopt a resolution voiding the program.
- **State ADU Law:** Cease implementation of the SB 9 Urgency Ordinance in any way that would violate Government Code sections 65852.2 and 65852.22, and ensure that any permanent SB 9 ordinance is consistent with these, and other state laws as described in this letter, particularly with respect to the treatment of ADUs and unit counts with and without a lot split.

Thank you for your prompt attention to this matter, and please respond in writing to this letter within 30 days of receipt of this letter. If you have questions or need additional information, please contact Brian Heaton, of our staff, at Brian.Heaton@hcd.ca.gov.

Sincerely,



David Zisser
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